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Expiration Date: March 06, 2013**COMPLIANCE IS MANDATORY**[Printable Format \(PDF\)](#)

Request Notification of Change

 (NASA Only)**Subject: Alternative Dispute Resolution (REVALIDATED)****Responsible Office: Office of the General Counsel****1. Policy**

a. It is NASA policy to maintain a productive work environment in which disputes are settled quickly by voluntary use of alternative dispute resolution (ADR). Utilization of ADR procedures, when practicable and appropriate, will help to resolve disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest organizational level. ADR means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudspersons, or any combination thereof. However, except as specified by grievance procedures set forth in 5 U.S.C. § 7121, the use of binding arbitration requires authorization by the NASA General Counsel.

b. ADR proceedings are processes that supplement rather than limit other available Agency dispute resolution procedures. The use of ADR procedures to resolve issues in controversy is encouraged. An "issue in controversy" means an issue material to a decision concerning a NASA program and where there is disagreement between the Agency and persons who would be substantially affected by the decision.

c. NASA may use ADR for the resolution of an issue in controversy that relates to an administrative program if the parties agree to such proceeding. ADR may also be used for the resolution of any claim within NASA's authority to award, compromise, or settle without the prior written approval of the Attorney General or designee. This NPD does not affect the plenary authority of the Department of Justice over Federal litigation.

d. Representatives of the parties must be knowledgeable about the chosen ADR process and intend to participate in good faith to resolve the dispute. Non-attorney representatives may participate in ADR proceedings. However, except as specified by procedures set forth in 29 CFR § 1614.105, NASA reserves the right to disapprove a non-attorney representative in proceedings where it has been determined that the subject area of the proceeding is so complex or specialized that only attorneys may adequately provide representation or assistance. The General Counsel or, when the deciding official's place of duty is at a NASA Center or Component Facility, the Chief Counsel, will make the determination to disapprove a non-attorney representative. "Deciding official" means the person within NASA with authority to resolve an issue in controversy on behalf of the Agency.

e. Neutrals can come from a variety of sources: from within the Agency; from within another Federal agency (Inter-Agency Program on Sharing Neutrals, known as "Shared Neutrals"); or from the private sector. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve. A neutral serving as a conciliator, facilitator, or mediator serves at the will of the parties. A "neutral" is an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. Neutrals should be knowledgeable about the chosen ADR process, and familiar with the applicable laws and regulations related to the issue in controversy.

f. Confidentiality is a critical component of ADR. The confidentiality provisions of the Administrative Dispute Resolution Act of 1996, as amended, (ADR Act) vary depending on such things as the type of ADR procedure used, the number of parties participating, and the issues involved. 5 U.S.C. § 574. Generally, a dispute resolution communication, as defined by 5 U.S.C. § 571(5), or any communication provided in confidence to a neutral, should not be disclosed. There are exceptions to this rule where disclosure would be permitted or required by law. In order to determine whether information should be disclosed or withheld, the advice of the General Counsel or, when the deciding official's place of duty is at a NASA Center or Component Facility, the Chief Counsel, should be sought. "In confidence" means that the information is provided either with the expressed intent that it not be disclosed or under

circumstances creating the reasonable expectation that the information will not be disclosed.

g. ADR may not be appropriate under the following circumstances:

- (1) A definitive or authoritative resolution of the matter is required for precedential value, and ADR is not likely to be accepted generally as an authoritative precedent;
- (2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and ADR would not likely serve to develop a recommended policy for the Agency;
- (3) Maintaining established policies is of special importance, consistency among individual decisions is important, and ADR would not likely reach consistent results among individual decisions;
- (4) The matter significantly affects persons or organizations that cannot be parties to the ADR proceeding;
- (5) A full public record of the proceeding is important, and ADR cannot provide such a record; or
- (6) The Agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and ADR would interfere with the Agency's fulfilling that requirement.

h. The Deputy General Counsel serves as the Agency's Dispute Resolution Specialist (DRS). The DRS is responsible for: (1) directing the Agency's implementation of the ADR Act; (2) developing the Agency's policy on the use of ADR and case management; and (3) representing the Agency at the Interagency ADR Working Group. The DRS and other employees involved in the implementation of the Agency's ADR policy will receive training on a regular basis that includes the theory and practice of negotiation, mediation, arbitration, or related techniques.

2. Applicability

This NPD applies to NASA Headquarters and NASA Centers, including Component Facilities.

3. Authority

5 U.S.C. §§ 571-584, the Administrative Dispute Resolution Act of 1996, as amended.

4. References

- a. 41 U.S.C. §§ 601-613, the Contract Disputes Act of 1978, as amended.
- b. 4 CFR Part 2, General Accounting Office, Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts.
- c. 5 CFR Chapter II, Merit Systems Protection Board.
- d. 5 CFR Chapter XIV, Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel.
- e. 29 CFR Part 1614, Federal Sector Equal Employment Opportunity.
- f. 48 CFR Chapter 1, Federal Acquisition Regulation (FAR).
- g. 48 CFR Chapter 18, NASA FAR Supplement.
- h. Executive Order 12988, Civil Justice Reform, February 7, 1996.
- i. Executive Order 12979, Agency Procurement Protests, October 25, 1995.
- j. President of the United States Memorandum, Designation of Interagency Committees to Facilitate and Encourage Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking, May 1, 1998.
- k. Attorney General of the United States Department of Justice Order, Promoting the Broader Appropriate Use of Alternative Dispute Resolution Techniques, April 6, 1995.
- l. The Interagency Alternative Dispute Resolution Working Group. <http://www.adr.gov/>

5. Responsibility

a. The General Counsel is responsible for the following:

- (1) Authorizing the use of arbitration in bid protests before the General Accounting Office and in contract disputes before the Armed Services Board of Contract Appeals; and

- (2) Consulting with the Attorney General about the appropriate use of binding arbitration prior to Agency use.
- b. The Deputy General Counsel is responsible for the following:
- (1) Directing the Agency's implementation of the ADR Act;
 - (2) Developing the Agency's policy on the use of ADR and case management; and
 - (3) Representing the Agency at the ADR Working Group.
- c. The Director, Workforce Strategy Division, and Center Directors are responsible for the following:
- (1) Designating a senior official within their organization as the liaison to the DRS; and
 - (2) Encouraging the use of ADR within their organizations in agreement with the DRS and this NPD.
- d. The Assistant Administrator, Office of Procurement, is responsible for ensuring the use of ADR where required and encouraging the use of ADR where appropriate.
- e. The Assistant Administrator for Diversity and Equal Opportunity, is responsible for ensuring the use of ADR where required and encouraging the use of ADR where appropriate.

6. Delegation of Authority

- a. The General Counsel is delegated authority to carry out the functions and exercise the authority vested in the Administrator by the Administrative Dispute Resolution Act of 1996, as amended, to take actions required or permitted as related to the use of arbitration and or binding arbitration. 5 U.S.C. §§ 575-581.
- b. The Deputy General Counsel is delegated authority to carry out the functions and exercise the authority as the Agency DRS pursuant to § 3(b) of the Administrative Dispute Resolution Act of 1990, Pub. L. No. 101-552, as amended by Pub. L. No. 104-320. 5 U.S.C. §§ 571-584.

7. Measurements

Annual summaries of the number of attempted uses of ADR, including the type of dispute and the results, from Headquarters and Centers, including Component Facilities, shall be submitted annually to the DRS.

8. Cancellation

NPD 2010.2B, dated March 6, 2003

**REVALIDATED MARCH 6, 2008, ORIGINAL SIGNED BY: /s/ Sean O'Keefe
Administrator**

Attachment A: (Text)

(URL for Graphic)

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